

Freedom of Information Act 2000 (Section 50) and Environmental Information Regulations 2004

Decision Notice

Date: 29 June 2010

Public Authority: Sefton Metropolitan Borough Council
Address: Town Hall
Lord Street
Southport
Merseyside
PR8 1DA

Summary

The complainant requested free access to information regarding a property required to complete a CON29 form and the personal inspection of the Land Charges Register. The Council repeatedly refused to provide the information or inspection free of charge whilst awaiting legal advice regarding the ICO's published guidance. The Commissioner finds that the Council failed to comply with regulation 5(1) as it failed to make the information available on request and 5(2) as it failed to make it available within the statutory time for compliance. The Commissioner also finds that the Council breached regulation 8(2)(b) by attempting to impose a charge to allow the complainant to inspect the requested information. The Council must now make the requested information available to the complainant within 35 days of this notice.

The Commissioner's Role

1. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR shall be enforced by the Information Commissioner (the "Commissioner"). In effect, the enforcement provisions of Part 4 of the Freedom of Information Act 2000 (the "Act") are imported into the EIR.

Background

2. Section 3 of the Local Land Charges Act 1975 compels all local authorities to generate, maintain and update a Local Land Charges Register and to provide local searches. In order to obtain information from a local search, an application for an Official Search must be submitted to the relevant Local Authority on form LLC1. This is usually accompanied by form CON29R.
3. The CON29R form is comprised of two parts. Part 1 contains a list of standard enquiries about a property. Optional enquiries are contained in Part 2.
4. When a property or piece of land is purchased or leased, a request for a search is sent to the relevant local authority.
5. The complainant represents a company which provides information about property and land issues.

The Request

6. On 08 May 2009 the complainant contacted the public authority's Land Charges and Building Control departments to make a verbal request for environmental information concerning a specific named property.
7. On 16 July 2009 the complainant requested the following information in writing from the public authority:

"We now request free access to all the information required to complete a CON29 and the personal inspection of the Land Charges register. To assist you and so as not to unnecessarily burden you with our presence we are prepared to accept copies of the information at the proscribed charge of ten pence per copy."

8. On 30 July 2009 the public authority provided a response to the complainant stating the following:

"Please note that the Council is currently taking its own legal advice on the guidance issued by the ICO. Until this advice is received, property search information remains available under the Council's existing charging regime."

In other words the Council refused to provide access to the information free of charge. The Council would only allow inspection of the information after the payment of a fee.

9. On 31 July 2009 the complainant replied to the authority regarding its decision stating:

"Thank you for your letter refusing my request for free access to information.

I am not satisfied with your response and would like you to enter my complaint into your official complaints procedure.

My complaint is; You will not give me access to personally inspect the records, free of charge to compile a personal search. You will not make available a place designated for the inspection of environmental information."

10. On 14 August 2009 the public authority wrote to the complainant stating that the Council was still in the process of interpreting the ICO's aforementioned guidance and this guidance was not statutory. The Council reiterated that until a decision was forthcoming the existing access and charging scheme remained in place under the Local Authorities (England) (Charges for Property Searches) Regulations 2008. The public authority provided a copy of its Land Charges leaflet.
11. In the same letter of 14 August 2009 the public authority failed to make a specific reference to the complainant's request of 31 July 2009 to be entered into its official complaints procedure. However there appears to be a "Corporate Complaint Ref: CC02771" at the beginning of the letter which the Commissioner considers suggests that the public authority did carry out an internal review and communicate its decision, albeit in a brief manner, to the complainant.
12. On 21 August 2009 the complainant wrote to the public authority and again stated his dissatisfaction at its response of 30 July 2009. The complainant chased a decision from the public authority regarding his request for an internal review.
13. On 25 August 2009 the public authority forwarded a copy of its response of 14 August 2009 to the complainant.

The Investigation

Scope of the case

14. On 02 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The Council were charging for access to environmental information.
 - Free access to the information requested had been refused and therefore the public authority was incorrectly withholding information.

Chronology

15. On 23 October 2009 the Commissioner wrote to the public authority asking the Council to reconsider its refusal to disclose the requested information. Included within the letter were links to the guidance concerning regulations 5 and 8 of the EIR found on the ICO's website and two relevant Decision Notices the Commissioner had issued earlier on similar cases of this nature, FER0236058 and FER0240911.
16. On 04 November 2009 the public authority replied to the Commissioner making two points:
- The Council was still awaiting definitive legal advice regarding the application and implications of the recent guidance published by the ICO.
 - The Council's existing access and charging regime remained in place until the legal advice was received, i.e. applicants could inspect requested information on payment of a fee.

Analysis

Substantive Procedural Matters

Regulation 2

17. The Commissioner has considered whether the information requested by the complainant is environmental information as defined by the EIR.

18. The Commissioner considers that the information requested falls within regulation 2(1)(c): “measures (including administrative measure), such as policies, legislation, plans, programmes, environmental agreements and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect these elements”. Information about a plan or measure or an activity that affects or is likely to affect the elements of the environment is environmental information. The Commissioner therefore considers the information requested in paragraph 7 to be environmental information.

Regulation 5

19. Regulation 5(1) of the EIR states that a public authority that holds environmental information shall make it available on request. Regulation 5(2) states that this information shall be made available as soon as possible and no later than 20 working days after the date of receipt of the request. To date no requested information which the public authority holds has been provided to the complainant. The Commissioner therefore concludes that the Council has breached regulation 5(1) and furthermore regulation 5(2) by failing to make the requested information available within 20 working days following receipt of the request.

Regulation 6

20. Regulation 6(1) provides an applicant with the right to request that information be made available in a particular form or format. It is the Commissioner’s view that although regulation 6(1) may appear primarily to be concerned with the form or format information is provided in; it should be interpreted broadly and does provide a right to request the inspection of environmental information. A public authority should comply with this preference unless it is reasonable to make the information available in another format, or the information is already publicly available in another format.
21. The Council has indicated that it is willing to allow the complainant access to inspect the information on provision of a fee. Therefore, the Commissioner considers that it has complied with the duty to make information available in the applicant’s preferred format as set out under regulation 6(1).

Regulation 8

22. Regulation 8 provides a general right for public authorities to make a charge for making information available. However, that right is subject to a number of conditions. The relevant conditions in this case are contained in regulation 8(2).
23. Regulation 8(2)(a) states that a public authority shall not make any charge for allowing an applicant to access any public registers or lists of environmental information, and regulation 8(2)(b) states that a public authority shall not make any charge for allowing an applicant to examine the information requested at a place which the authority makes available. As previously stated the Council was willing to allow access to the information requested only on payment of a fee. The Commissioner therefore considers that the Council has breached regulation 8(2)(b).

The Decision

24. The Commissioner's decision is that the Council did not deal with the request for information in accordance with the EIR. The Council breached the following requirements of the EIR:
 - Regulations 5(1) and 5(2) – the public authority failed to make the information available on request and within 20 working days.
 - Regulation 8(2)(b) – the public authority attempted to charge a fee to allow the complainant access to the requested information.

Steps Required

25. The Commissioner requires that the Council make the requested information available to the complainant to inspect free of charge to ensure compliance with the Act.
26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

27. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

28. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 29th day of June 2010

Signed

**Gerrard Tracey
Principal Policy Adviser**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 5 - Duty to make available environmental information on request

Regulation 5(1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.

Regulation 5(2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.

Regulation 5(3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.

Regulation 5(4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.

Regulation 5(5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.

Regulation 5(6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 6 - Form and format of information

Regulation 6(1) Where an applicant requests that the information be made available in a particular form or format, a public authority shall make it so available, unless –

- (a) it is reasonable for it to make the information available in another form or format; or
- (b) the information is already publicly available and easily accessible to the applicant in another form or format.

Regulation 6(2) If the information is not made available in the form or format requested, the public authority shall –

- (a) explain the reason for its decision as soon as possible and not later than 20 working days after the date of receipt of the request for the information;
- (b) provide the explanation in writing if the applicant requests; and
- (c) inform the applicant of the provisions of regulation 11 and the enforcement and appeal provisions of the Act applied by regulation 18.

Regulation 8 - Charging

Regulation 8(1) Subject to paragraphs (2) to (8), where the public authority makes environmental information available in accordance with regulation 5(1) the authority may charge the applicant for making the information available.

Regulation 8(2) A public authority shall not make any charge for allowing an applicant –

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for the examination.

Regulation 8(3) A charge under paragraph (1) shall not exceed an amount on which the public authority is satisfied is a reasonable amount.

Regulation 8(4) A public authority has notified an applicant under paragraph (4) that advance payment is required, the public authority is not required –

- (a) to make available the information requested; or
- (b) to comply with regulations 6 to 14,

unless the charge is paid no later than 60 working days after the date on which it gave the notification.

Regulation 8(6) The period beginning with the day on which the notification of a requirement for an advance payment is made and ending on the day on which that payment is received by the public authority is to be disregarded for the purpose of determining the period of 20 working days referred to in the provisions in paragraph (7), including any extension to those periods under regulation 7(1).

Regulation 8(7) The provisions referred to in paragraph (6) are –

- (a) regulation 5(2);
- (b) regulation 6(2)(a); and
- (c) regulation 14(2).

Regulation 8(8) A public authority shall publish and make available to applicants –

- (a) a schedule of its charges; and
- (b) information on the circumstances in which a charge may be made or waived.